

Applicants affirm the election of claims 1-24 and 42-44. Claims 25-41 and 45-77 have been canceled without prejudice or disclaimer.

In the Office Action, claims 1-21 and 42-44 were rejected under 35 U.S.C. §102(e) as being anticipated by Melvin (U.S. Patent No. 6,190,408), or alternatively under 35 U.S.C. §103(a) as obvious over Melvin in view of Alferness (U.S. Patent No. 6,165,121); and claims 22-24 were allowed.

Applicants thank the Examiner for allowing claims 22-24.

In addition to canceling nonelected claims 25-41 and 45-77, Applicants have canceled claims 9 and 18 without prejudice or disclaimer.

As discussed at the interview, this application claims the benefits of priority as a continuation-in-part of U.S. Application No. 08/778,277 (the '277 application), filed January 2, 1997, now U.S. Patent No. 6,050,936. Some of the subject matter contained in this application was first presented in the '277 application, including, for example, the subject matter contained in Figs. 17-19 and the written description of those figures at pages 31 and 32 of the application specification.

The Examiner relied on Melvin as the base reference in rejecting the claims. Alferness was relied on for its alleged teaching of treating hearts having infarcted tissue. Without necessarily agreeing with the Examiner's characterizations of the Melvin and Alferness references, the rejections based on these references should nonetheless be withdrawn for the reasons explained below.

The Melvin reference has a filing date of March 5, 1998, which is after the January 2, 1997 effective filing date of at least some of the subject matter, including

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Figs. 17-19, in this application. Therefore, as agreed upon at the interview, Melvin is not prior art to at least pending claims 1, 2, 5, 6, 10, 11, 14, 15, 19-21, and 42-44.

Without making any admission whatsoever regarding the effective filing date of pending claims 3, 4, 7, 8, 12, 13, 16, and 17, assuming *arguendo* these claims are not entitled to the effective filing date of January 2, 1997, these claims nonetheless are patentably distinguishable from the Melvin reference. For example, the Melvin reference does not teach or suggest "positioning the tension member diametrically across the infarcted tissue," as recited in claims 3 and 12. The Melvin reference also does not teach or suggest that the "anchor members are positioned exterior to the heart chamber approximately between said healthy and infarcted tissue," as recited in claims 4 and 13. Further, the Melvin reference neither teaches nor discloses that the "tension member draws papillary muscles of the mitral valve together," as recited in claims 7 and 16.

In the Office Action, the Examiner asserted that "the exact positioning of the reshaping mechanisms of Melvin . . . would appear to be an obvious operational variant." As discussed at the interview, it would not have been obvious to one having ordinary skill in the art at the time of Applicants' invention to modify the positioning of the reshaping mechanism of the Melvin reference since that reference teaches that the reshaping mechanism should be positioned with respect to the heart such that two continuous truncated ellipsoidal portions are formed. Thus, the Melvin reference teaches away from placing the reshaping mechanism in a position other than that disclosed in the reference, i.e., the position forming two elongated truncated ellipsoidal portions.

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As discussed above, the Alferness reference was relied on as a secondary reference for the teaching of treating hearts having infarcted tissue. This reference neither discloses nor otherwise suggests Applicants' claimed subject matter and also does not cure the above-noted deficiencies of the Melvin reference.

For at least these reasons, the rejections of pending claims 1-8, 10-17, 19-21, and 42-44 should be withdrawn.

Applicants respectfully request the withdrawal of the outstanding rejections and the timely allowance of the pending claims 1-8, 10-17, 19-24, and 42-44.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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